



RESEARCH ARTICLE

Enterprises' Responsibility to Pay Social Insurance for Employees in Vietnam

Tran Duc Thang ¹, Tran Dung Hai ²

¹University of Labour and Social Affairs, Vietnam

²Hanoi University of Culture, Vietnam

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ABSTRACT

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This article outlines some content about social insurance, stating the responsibility of enterprises to pay social insurance premiums for employees. The article presents the current situation of participation in social insurance, thereby drawing recommendations for the parties in the labor relationship and recommendations to improve the law.

*Corresponding Author:

trandunghai.huc@gmail.com

INTRODUCTION

1. General overview of social insurance

Social insurance is an objective, diverse and complex need of society. The relationship between the parties in social insurance arises on the basis of labor relations and takes place between three parties: the party participating in social insurance, the social insurance party and the social insured party. Events that reduce or lose the ability to work or lose a job in social insurance can be random risks against people's subjective wishes (sickness, work accidents, occupational diseases...) or non-randomly (old age, maternity...) occurring during the working process or outside the working process. According to the Vietnamese Dictionary, social insurance is: "ensuring material benefits for workers and employees when unable to work due to illness, childbirth, old age, or occupational accidents..." ¹. From an organizational perspective, there is an opinion that "social insurance is an organization that ensures compensation or partial replacement of income for workers when they are detained or lose income from their profession due to reduction or loss of ability to work or unused labor, through the formation and use of a financial fund made up of contributions from social insurance participants and other legal revenue sources, in order to contribute

Institute of Linguistics, Vietnamese Dictionary, Publishing House. Da Nang, Da Nang, 1996, p. 36¹

Ensuring economic security for workers and their families, while contributing to ensuring social safety ². From a legal perspective, according to the Vietnamese Labor Law Textbook of the Faculty of Law, Hanoi National University, it is defined: "Social insurance is a collection of State regulations to regulate economic relations - society is formed in the field of ensuring subsidies to stabilize the lives of workers when they encounter risks and dangers during the working process or when they are old and no longer able to work ³.

According to current legal regulations, Clause 1, Article 3 of the 2014 Law on Social Insurance stipulates:

Social insurance is a guarantee to replace or partially compensate employees' income when they lose or lose income due to illness, maternity, work accidents, occupational diseases, the end of working age or death, on the basis of contributions to the social insurance fund.⁴

Social insurance has the following characteristics:

- Regarding the beneficiaries: The beneficiaries of social insurance benefits are employees and, in some cases, their family members.
- Purpose of benefits: social insurance is to compensate employees when they encounter cases of cessation or loss of income. Social insurance is intended to implement social policies, not for business purposes.
- Regarding subsidy sources: contributions by employees and employers to the social insurance fund and support from the state.
- Regarding the principle of subsidies: social insurance is a community risk sharing activity according to the principle of many compensating for the few and the principle of saving costs; redistribute the income of members of society vertically and horizontally.

Insurance plays an important role for employees, employers and society, demonstrating:

- For workers: In daily life there are risks such as illness, work accidents, occupational diseases, maternity, old age and death... All of these risks can occur for any worker, at any time in daily life and causes them both physical and mental difficulties, causing loss or reduction of income.
- Besides, social insurance also plays a role for employers. Although employers do not receive benefits, when they pay social insurance premiums, a situation occurs. With insurance, they do not have to worry about paying compensation for workers, creating trust, stability in labor relations and business development ⁵.
- For society: As one of the state's socio-economic policies, social insurance ensures workers, social insurance activities address risks occurring to workers. workers, actively contributing to the restoration of working capacity and creativity of labor.

In addition, the role of social insurance in society is also shown that social insurance contributes to social justice and is a tool to redistribute income among social insurance participants. In this case, social insurance can be distributed among new participants, current beneficiaries, healthy people, sick people, old people, young people, high-income people, and low-income people. ..⁶

Because of such great roles, Social Insurance is of interest to the State and society, and is one of the three main pillars of social security policy (social insurance, social assistance and incentives). society). Therefore, social insurance policy is not only governed by the Labor Law (2019 Labor Code and guiding documents) but also has its own governing law, the Law on Social Insurance. year 2014.

Dr. Mac Tien Anh, General concept of social insurance, Social Insurance Magazine, May 2005²

Faculty of Law, National University, Vietnamese Labor Law Textbook, Publishing House. Hanoi National University, ³ Hanoi, 1999, p. 312-313

Social Insurance Law 2014⁴

Hanoi Law University, Social Security Law textbook, Publishing House . Justice, Hanoi, 2022, p. 103⁵

Dr. Mac Van Tien, "General overview of social security", Social Insurance Journal, No. 5/2005, p. 21⁶

2. Responsibility of enterprises to pay social insurance for employees

In the 2019 Labor Code, the word "social insurance" is mentioned 42 times, showing the position and importance of social insurance to labor relations and the employer's responsibility to employees. social insurance. Accordingly, the employer's responsibilities regarding social insurance are regulated as follows:

- Implement legal regulations on labor, employment, vocational education, social insurance, health insurance, unemployment insurance and occupational safety and hygiene; Develop and implement solutions to prevent and combat sexual harassment in the workplace .⁷
- Declare the use of labor within 30 days from the date of commencement of operation, periodically report the situation of changes in labor during the operation to the specialized labor agency under the People's Committee. provincial level and notify the social insurance agency.⁸
- Employers must provide truthful information to employees about work, work location, working conditions, working hours, rest hours , safety and occupational hygiene. , wages, salary payment methods , social insurance, health insurance, unemployment insurance, regulations on protecting business secrets, protecting technology secrets and other directly related issues. Next comes the conclusion of the labor contract requested by the employee.⁹
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- The content of the labor contract must have regulations on social insurance.¹¹
- Obligations of the employer when unilaterally terminating the labor contract illegally : Must accept the employee back to work according to the concluded labor contract; Must pay salary, social insurance, health insurance, unemployment insurance during the days the employee is not allowed to work and must pay the employee an additional amount of money at least equal to 02 months' salary according to the contract. labor contract.¹²
- Responsibilities when terminating the labor contract : Wages, social insurance, health insurance, unemployment insurance, severance pay and other employee benefits according to the collective labor agreement, Labor contracts are prioritized for payment in cases where the enterprise or cooperative terminates operations, is dissolved, or goes bankrupt ; Complete the procedure to confirm the time of payment of social insurance and unemployment insurance and return it along with the original documents if the employer has kept the employee ¹³.
- Training costs include expenses with valid documents on costs paid to instructors , learning materials, schools, classes, machines, equipment, practice materials, and other support costs. for learners and salaries, social insurance, health insurance, and unemployment insurance payments for learners during their schooling period. In case the employee is sent for training abroad, the training cost also includes travel costs and living expenses during the training period.¹⁴

Point d, Clause 2, Article 6 of the 2019 Labor Code⁷

Clause 2, Article 12 of the 2019 Labor Code⁸

Clause 1, Article 16 of the 2019 Labor Code⁹

Clause 2, Article 19 of the 2019 Labor Code¹⁰

Clause 1, Article 21 of the 2019 Labor Code¹¹

Clause 1, Article 41 of the 2019 Labor Code¹²

Clause 2 and 3, Article 48 of the 2019 Labor Code¹³

Clause 3, Article 62 of the 2019 Labor Code¹⁴

- Salary deduction : The monthly salary deduction must not exceed 30% of the employee's actual monthly salary after deductions for mandatory social insurance, health insurance, and unemployment insurance. , personal income tax.¹⁵
- Employers and employees must participate in compulsory social insurance, health insurance, and unemployment insurance; Employees are entitled to benefits according to the provisions of law on social insurance, health insurance and unemployment insurance. Encourage employers and employees to participate in other forms of insurance for employees.¹⁶
- While the employee is on leave to enjoy social insurance benefits, the employer does not have to pay the employee's salary, unless the two parties have otherwise agreed.¹⁷
- For employees who are not subject to compulsory social insurance, health insurance, or unemployment insurance, the employer is responsible for paying an additional amount at the same time as the salary period. employee is equivalent to the amount the employer pays for compulsory social insurance, health insurance, and unemployment insurance for employees according to the provisions of law on social insurance and health insurance. unemployment insurance.¹⁸

In addition, the 2019 Labor Code also stipulates the responsibilities of employers and employees regarding social insurance, which will be cited in the Law on Social Insurance and regulations on social insurance for some specific employees.

3. Current status of social insurance participation

Social insurance includes two types: compulsory social insurance and voluntary social insurance. Participation in both types of social insurance has generally increased. According to data from the Ministry of Labor, War Invalids and Social Affairs and Vietnam Social Insurance, it can be seen that in recent times, the economy has developed, workers' income has increased, and people's awareness and needs have increased. Financial security also increases. Along with the efforts of Vietnam's social insurance industry in implementing measures to manage subjects participating in social insurance, the number of employers and the number of employees participating in social insurance increases every year in both absolute numbers and relative numbers ¹⁹.

It can be seen that in the period 2016-2020, the number of compulsory social insurance participants increased annually from 12,852 to 15,033 thousand people, the number of participating workers, the number of salaried workers according to the Labor Market Bulletin increased. from 22,229 to 25,674 thousand people. After 6 years of implementing the 2014 Social Insurance Law, in the period 2016-2020, the number of workers participating in compulsory social insurance increased by 2,181 thousand people (an average annual increase of 4%); In 2020, the number of workers participating in social insurance decreased, due to the impact of the Covid-19 epidemic; The number of new participating workers decreased, while the number of workers receiving one-time social insurance increased ²⁰. In 2020, despite the impact of the Covid-19 pandemic, the number of workers participating in voluntary social insurance increased by 86% compared to 2019. This result is because in 2020, Vietnam Social Insurance

Clause 3, Article 102 of the 2019 Labor Code¹⁵

Clause 1, Article 168 of the 2019 Labor Code¹⁶

Clause 2, Article 168 of the 2019 Labor Code¹⁷

Clause 3, Article 168 of the 2019 Labor Code¹⁸

Dr. Hoang Bich Hong, Current status and solutions to develop social insurance participants, Online Finance ¹⁹ Magazine, February 27, 2021, <https://tapchitaichinh.vn/bao-hiem/thuc-trang-va-analysis-phap-phat-trien-tuong%C2%A0participation-in-bao-hiem-xa-hoi-332209.html>

Dr. Hoang Bich Hong, Current status and solutions to develop social insurance participants, Online Finance ²⁰ Magazine, February 27, 2021, <https://tapchitaichinh.vn/bao-hiem/thuc-trang-va-analysis-phap-phat-trien-tuong%C2%A0participation-in-bao-hiem-xa-hoi-332209.html>

synchronously deployed many solutions. , in which the highlight is the implementation of the communication program "Launching ceremony to respond to the Month of campaigning to deploy universal social insurance - Propagating and mobilizing people to participate in voluntary social insurance" on a national scale.

According to the latest report of the Ministry of Labor, War Invalids and Social Affairs, Minister Dao Ngoc Dung said that by the end of December 2020, there were more than 15 million people participating in compulsory social insurance, a decrease of 153,092 people (corresponding to 1 %) compared to 2019. This is the first year that the number of people participating in compulsory social insurance has decreased compared to the previous year, the main reason is due to the impact of the COVID-19 epidemic, leading to workers at businesses and agencies. Production and business establishments have lost their jobs and are no longer eligible to participate in compulsory social insurance.

Regarding employers' participation in social insurance, currently, there are over 151,000 organizations and individuals that pay income but have not participated in mandatory social insurance for employees; There are over 213,000 organizations and individuals that have not fully participated. The Social Insurance Agency has reviewed over 196,000 businesses and identified nearly 388,000 employees who are eligible to participate but have not yet participated in compulsory social insurance. Although the number of employees participating in mandatory social insurance decreased in 2020, the number of participating businesses increased. There are 622,020 units participating in compulsory social insurance, an increase of nearly 17% over the same period in 2019. In addition, the amount of compulsory social insurance collected in 2020 is over 261.7 trillion VND, an increase of 6.28% over the same period. period of 2019. The average salary as a basis for compulsory social insurance payment in 2020 of employees is 5,687,180 VND/month, an increase of 6.05% compared to 2019. As of December 31, 2020, the total amount Late payment of compulsory social insurance is VND 12,113 billion, an increase of VND 2,013 billion (equivalent to 19.9%) compared to 2019, accounting for 4.4% of receivables ²¹.

At the Standing Committee of the Social Committee meeting at the expanded session for preliminary inspection of the Government Report on the implementation of social insurance policies, regimes, management and use of social insurance funds in 2021, taking place on September 16, 2022, Deputy Minister Nguyen Ba Hoan said that the number of participants and compulsory social insurance revenues have increased compared to 2020, the number of people participating in voluntary social insurance continues to increase. increasing and exceeding the target of developing subjects participating in voluntary social insurance in Resolution 28-NQ/TW on social insurance policy reform ²².

Besides some results, there are still some difficulties in participating in social insurance as follows:

Firstly, late payment and evasion of insurance payment is quite common

This is a comment at the Standing Committee of Social Affairs meeting at the expanded preliminary inspection session of the Report to the Government on the implementation of social insurance policies and regimes, management and use of social insurance funds. 2021 festival, taking place on September 16, 2022. Commenting on the Government's report, the Standing Committee of Social Affairs pointed out that the number of people participating in social insurance has continued to expand, always meeting the plan, but the number of people participating in social insurance is sustainable. Mandatory meetings have not yet met

²¹Ministry of Labor, War Invalids and Social Affairs, Report on the implementation of social insurance policies and regimes, management and use of the Social Insurance Fund, 2210/2011, <http://www.molisa.gov.vn/Pages/tintuc/chitiet.aspx?tintucID=228742>

²²Ministry of Labor, War Invalids and Social Affairs, Voluntary Social Insurance far exceeds 2021 target, reaching target by 2025, September 16, 2022, <http://www.molisa.gov.vn/Pages/tintuc/chitiet.aspx?tintucID=232800>

the requirements, it is expected that it will be difficult to achieve the targets set for the period 2025-2030²³.

Second, some guiding documents have not been issued in time. Specifically, although the Government issued 02 new Decrees, it has not yet issued a Decree on voluntary labor insurance (Point c, Clause 3, Article 6 of the Law on Occupational Safety and Hygiene)²⁴.

Third, information and communication work is not really effective. Competent agencies have not been truly flexible, further diversifying communication methods, forms, and content, taking advantage of cyberspace to propagate policies and laws on social insurance when 2021 arrives. with all types of people and businesses.

4. Some recommendations.

Firstly, propagate to employers about the role of social insurance for employers and the harmful effects of evading social insurance payments.

Enterprises evading social insurance payments or owing social insurance not only causes damage to employees, but will cause huge losses to businesses when an unfortunate insurance event occurs. In such cases, in addition to the employer's responsibilities as stipulated in the Labor Code, the enterprise must also bear the responsibilities of the social insurance agency. Therefore, it is recommended that both parties in the labor relationship seriously pay social insurance according to the provisions of the Social Insurance Law. Laws on social insurance need to have heavier sanctions against businesses that avoid paying social insurance or deliberately find reasons to delay paying social insurance.

Enterprises are not only responsible for occupational accidents but are also responsible together with social insurance and health insurance agencies (and or on their behalf if social insurance is not paid) for treatment until the employee's stability. This recommends that businesses be more proactive in participating in supporting workers to quickly recover.

Failure to properly implement social insurance can affect the unemployment insurance regime and the employee's enjoyment of unemployment insurance benefits. For these damages, the employer may have to compensate. It is recommended that businesses, when an event occurs, should quickly carry out procedures for social insurance and unemployment insurance for employees.

Second, strengthen propaganda to employees about social insurance policies. Even if an accident at work occurs, even if it is the employee's fault, the employee is still entitled to social insurance benefits. The fact that businesses identify employee errors is not always correct according to the law, which can lead to incorrect identification of the problem, thereby calculating wrong benefits for employees. Propagate to employees that in cases of labor accidents or termination of labor contracts, if the enterprise does not pay just, reasonable and lawful payments to the employees, they should sue at the People's Court to best protect their rights and interests. their legitimate interests. Thereby increasing the confidence of workers

Third, perfect the legal system on social insurance, in particular, it is necessary to issue a Decree on voluntary labor insurance soon. In addition, there needs to be specific instructions on social insurance regimes so that businesses and employees can better understand their legitimate rights and benefits when participating in social insurance and the losses when withdrawing insurance. One-time social insurance. In addition, there needs to be a document clarifying the connection between the two forms of compulsory social insurance and voluntary social insurance, employees are allowed to add time to participate in social insurance and the pension calculation is the same. Recognizing this issue will avoid employees receiving

²³Ministry of Labor, War Invalids and Social Affairs, Voluntary Social Insurance far exceeds 2021 target, reaching target by 2025, September 16, 2022, <http://www.molisa.gov.vn/Pages/tintuc/chitiet.aspx?tintucID=232800>

²⁴Ministry of Labor, War Invalids and Social Affairs, Voluntary Social Insurance far exceeds 2021 target, reaching target by 2025, September 16, 2022, <http://www.molisa.gov.vn/Pages/tintuc/chitiet.aspx?tintucID=232800>

social insurance once and not intending to continue participating when leaving the mandatory participation area.

Fourth, competent agencies need to be more flexible and diversify communication methods, forms, and content, taking advantage of cyberspace and social media to propagate policies and laws. Law on social insurance when 2021 comes to all people and businesses. It is necessary to develop many forms of communication, such as: Creating communication skits about social insurance policies; use social networking tools; Issue publications and leaflets to propagate social insurance that are easy to understand and can illustrate contribution responsibilities and specific benefits; At each cultural house in a village, commune, ward or town, there must be propaganda signs and regulations on voluntary social insurance; Increase radio and television broadcasting time, broadcast multiple times at different time frames to convey the benefits of participating in social insurance to all classes of people...²⁵

Fifth, strengthen inspection, examination and handling of violations in the field of social insurance. No matter how complete a social insurance policy is, if not strictly implemented in practice, it can affect the effectiveness of the policy. To do so, it is necessary to strengthen inspection, examination and handling of violations to avoid violations, negative acts, profiteering from social insurance, and enhance the trust of businesses and workers in social insurance. social insurance policies.

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